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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,006	10/24/2003	William C. Phillips	1023-290US01	9345
28863 7590 02/01/2007 SHUMAKER & SIEFFERT, P. A. 8425 SEASONS PARKWAY SUITE 105 ST. PAUL, MN 55125			EXAMINER PATEL, NATASHA	
			ART UNIT	PAPER NUMBER
			3766	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
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Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/693,006

Applicant(s)

PHILLIPS ET AL.

Examiner

Natasha N. Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on amendment on 15 December 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 18-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) 7-8 is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-14 and 17 is/are rejected.
- 7) ☒ Claim(s) 15 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 30 August 2006.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The amendment filed on 15 December 2006 has been received and considered. By this amendment, Claim 7 has been amended. Claims 1-17 are now pending in the application.

Drawings

2. In view of the Applicant's modifications to Figures 17 and 18, the Examiner is withdrawing the objection, which was made against the drawings in the previous Office Action.

Claim Objections

3. In view of the Applicant's modification to Claim 1, the Examiner is withdrawing the objection which was made against Claim 1 in the last Office Action.

Response to Arguments

4. Applicant's arguments filed 15 December 2006 have been fully considered but they are not persuasive. As for the cell phone, just by looking at Fig. 6A, one can see that the phone is being used as a modem-like device to receive remote programming signals from the physician and relaying it to the implant. In that sense, the cell phone is a part of a programmer. So while one might not change the phone programming, it is nonetheless a programmer.

5. As to the printing of information, Claim 1 requires a plate printed with information *to identify the type of programmer* (emphasis added). This is considered intended use. Any information printed on the device that can help one to identify the type of programmer is valid. Thus, Stein's device reads on Claim 1. If one is to distinguish

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between a VCR and Stein's programmer, it would be simple to identify which was the medical device based on the printed information on Stein's device. The Claim does not require any specific information, and the Applicant has not identified what the act of "identifying" consists of. Accordingly, the motivation to modify a medical device programmer to include a printed cell phone faceplate is apparent simply based on the fact that cell phone faceplates are printed for identification means (see col. 3, lines 59-67 of Wycherley). No further modifications are required because printing the faceplates with any information automatically helps one to identify the programmer type.

6. Regarding Claims 15 and 16, the Examiner finds the arguments persuasive and thereby withdraws the rejections of Claims 15 and 16.

7. Regarding Claim 17, the examiner considers that the choice between an internal antenna and an external antenna is a design choice, having no apparent disclosed criticality besides personal preference. Thus, as long as Haller discloses the possibility of having an internal antenna (see col. 24, lines 54-60), Haller's invention reads on the limitations of Claim 17.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stein et al. (PG Pub. 2004/0230246).

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10. Regarding Claims 1 and 5, Stein discloses a medical device programmer (see rhythm management controller 10) comprising a first housing member (see rear 16), a second housing member (see front 14), and a plate member attached to the second housing member (see overlay 20 and removable cup 18), wherein the plate member includes a transparent area (see light transmissive status indicators 26, 28, 30, and 32) that exposes a display for viewing. The examiner considers the status indications are a type of display for viewing because a display is simply a visual representation and a light is a visual representation. Stein further discloses a printed label with information to identify a programmer type associated with the medical device programmer (see par. 37). The examiner considers that information about the use and operation of the controller identifies the programmer type because the instructions define the program. Furthermore, although Stein does not disclose that the printed label is on the plate member, it would have been obvious to one of ordinary skill in the art at the time of the invention to put the printed information on the plate member since it has been held that rearranging parts of an invention involves only routine skill in the art (*In re Japikse*, 86 USPQ 70). Finally, the examiner considers that since the serial number is also printed next to the instructions (see par. 49), an example of textual information is provided.

11. Claims 1, 6, 9-11, 13-14, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slipy et al (US Patent 5,848,152) in view of Haller et al. (US Patent 6,804,558) and further in view of Wycherley et al. (US Patent 6,898,283).

Regarding Claim 1, Slipy discloses a programmer (1600) comprising a first housing member (rear housing portion 416), a second housing member (front housing portion

414), and a plate member (faceplate 104) attached to the second housing member (see col. 5, line 66-col. 6, line 2), wherein the plate member includes a transparent area (lens aperture 160) that exposes a display for viewing. The examiner considers that the cell phone is a programmer because it is *capable* of inserting or encoding specific operating instructions into another machine or apparatus (i.e. another cell phone or an IMD as taught in Figure 6A of Haller) [emphasis added]. Slipy does not explicitly disclose that the plate member is printed with information. However, it is well known in the cell phone art to print a logo or trademark symbol on the faceplate of the programmer and the examiner considers that the company trademark identifies the programmer as a communication device. Nevertheless, Wycherley discloses a plate member (removable cover 2) that is printed with information to identify a programmer type (see "particular theme"; col. 3, lines 40-50). It would have been obvious to one of ordinary skill in the art at the time of the invention to use a cell phone with the structure disclosed by Slipy in the medical industry as taught by Haller (see mobile telephone/PDA 110; col. 31, lines 1-19) and incorporate printed faceplates into these medical programmers in order to provide an identity means (see Wycherley; col. 3, line 59) associated with the medical device programmer.

12. Regarding Claim 6, Slipy discloses that discloses the plate member is molded to define one or more apertures to accommodate buttons extending outward from the programmer (see keyholes 158; col. 5, line 41).

13. Regarding Claim 9, modified Wycherley discloses that the plate member is selected from one of a plurality of plate members (removable housing covers) having

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different configurations based on a match between the configuration of the plate member and a type of device being assembled (see col. 2, lines 31-49).

14. Regarding Claim 10, modified Wycherley discloses the plate member configuration comprises a size, a shape, a printed graphic (see col. 3, lines 8-13), and a number of apertures (see Figure 1) to accommodate input buttons extending outward from the programmer. The examiner considers that any object inherently comprises a size and a shape.

15. Regarding Claim 11, modified Haller discloses an infrared interface to receive changes to software executed by a processor within the programmer during an infrared communication session (see col. 7, lines 23-25; col. 22, lines 49-53; col. 42, lines 58-63). The mobile telephone is equivalent to the PDA according to Haller (see col. 21, lines 24-32).

16. Regarding Claim 13, Haller discloses that the display is a liquid crystal display (see col. 31, lines 6-8).

17. Regarding Claim 14, Slipy discloses a circuit board substantially enclosed within the first housing member and the second housing member (see col. 15, lines 56-58). Although Slipy does not disclose two separate circuit boards, it would have been obvious to one of ordinary skill in the art at the time of the invention to enclose two circuit boards within the first and second housing members since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art (*Nerwin v. Erlichman*, 168 USPQ 177, 179). Furthermore, Slipy discloses that the circuit board includes telemetry circuitry (see wire line interface 1514) and a display

(see display 1532) and display circuitry (see Figure 15). Finally, Slipy discloses that the circuit board includes control circuitry (see controller 1516) to drive the telemetry circuitry and the display circuitry.

18. Regarding Claim 17, Haller discloses that the first circuit board includes an internal antenna (see col. 24, lines 54-60). Since telemetry module 101 is on the first circuit board and the internal antenna is in the telemetry module, the internal antenna is also on the first circuit board.

19. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slipy et al (US Patent 5,848,152) in view of Haller et al. (US Patent 6,804,558) and Wycherley et al. (US Patent 6,898,283) as applied to Claim 1 above, and further in view of Coutre et al. (US Patent 5,317,506).

20. Regarding Claims 2-5, modified Wycherley discloses that the plate member adds personalization and customization to the device (see col. 2, lines 36-38). However, Wycherley does not elaborate on the specifics of this personalization information. The examiner considers that it is well known and common to include patient and clinic information on any medical device to help identify who the device is for and to prevent multiple devices from getting mixed up and confused. Nevertheless, Coutre discloses a label with personalization information to identify the patient as well as the clinic (see col. 1, lines 29-38). It would have been obvious to one of ordinary skill in the art at the time of the invention to use this well-known practice of labeling described by Coutre with Wycherley's invention to improve the managing and analysis of therapy programs delivered to the patient (see Coutre; col. 1, lines 9-11). Although Coutre does not

disclose where on the device the label is specifically placed, the examiner considers that it would have been obvious to one having ordinary skill in the art at the time of the invention to place the label on the faceplate since it has been held that rearranging parts of an invention involves only routine skill in the art (*In re Japikse*, 86 USPQ 70). Finally, the examiner considers that the labels are printed with graphic and text information (see Figure 1A), the patient and clinic information being the text and the bar code being the graphic.

21. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slipy et al (US Patent 5,848,152) in view of Haller et al. (US Patent 6,804,558) and Wycherley et al. (US Patent 6,898,283) as applied to Claim 1 above, and further in view of Stroebel et al. (US Patent 6,754,527).

22. Regarding Claim 12, Haller discloses power control circuitry (see power management module 106, Figure 7). Haller does not disclose that the power control circuitry reduces input voltage to a predetermined level to minimize noise levels within the programmer. However, it is common and well known to reduce input voltage to certain circuitry so the telemetry circuit can function with minimal noise from electrical interference. Stroebel is cited for periodically decreasing input voltage to minimize noise levels within the programmer (see col. 2, lines 38-48). Thus, it would have been an obvious choice to one of ordinary skill in the art to incorporate such a method of noise reduction because it enhances telemetric communication.

Allowable Subject Matter

23. Claims 7-8 are allowed.
24. Claims 15 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

25. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
26. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.
27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natasha N. Patel whose telephone number is 571-272-5818. The examiner can normally be reached on M-F 8:30-5:00.
28. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on 571-272-6996. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

29. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NNP
1/23/07



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